

An Award was entered in this case on April 3, 1997. Respondent appealed. The

Appeals Board heard oral argument September 3, 1997, and on April 17, 1998, the Appeals Board entered its decision. The decision affirmed the compensability of the claim but remanded the case to give the parties an opportunity to present evidence as to the pre- and post-injury wage and wage earning ability.

The original Award by the ALJ granted claimant benefits and provided that future medical would be considered upon proper application. On November 17, 1997, claimant filed an application for additional medical treatment. On December 2, 1997, the ALJ conducted a hearing to consider that application for additional medical treatment. On that same date, the ALJ entered an Order which granted the request for additional medical treatment and awarded claimant's counsel \$250 in attorney fees.

This appeal presents two different types of issues. The issues relating to medical treatment are preliminary hearing issues. The Board may consider allegations that the ALJ exceeded his jurisdiction. K.S.A. 1997 Supp. 44-551. The Appeals Board may consider the jurisdictional issues identified in K.S.A. 1997 Supp. 44-534a. The challenge to the award of attorney fees is, on the other hand, an appeal from a final order. Review is not limited to jurisdictional issues.

Respondent first contends that the ALJ does not have jurisdiction to award additional medical treatment while a case is pending on appeal and compensability remains an issue. Respondent cites, in support of this argument, K.S.A. 44-551(b)(2)(C). That statute provides that in cases appealed to the Board where compensability is not an issue the medical compensation is payable and not stayed by the application for review. Respondent contends that by negative implication respondent is not obligated to pay any medical benefits while a case is on appeal so long as compensability is an issue. As a logical extension, respondent contends that the ALJ cannot order it to pay other medical treatment while the case is pending on appeal.

The Appeals Board has and does construe the statute differently than respondent proposes. K.S.A. 44-551(b)(2)(A) provides that the Board is to issue orders on any appeal within 30 days from the date arguments were presented by the parties. Subsection (B) of that same statute provides that in cases where the Board does not issue a decision within 30 days from the argument, compensation, including medical compensation, is to be paid and continue to be paid until the order of the Board is issued. Construed in context, the Board understands subsection (C), upon which respondent relies, as a statement that the obligation to pay medical benefits is not stayed, even where compensability is at issue, after the 30-day period has run. Thereafter, the respondent is required to pay benefits, including medical compensation. Claimant's application in this case was made more than 30 days after the Appeals Board heard oral arguments on September 3, 1997. The Board had not issued a decision and, accordingly, the stay no longer applied. The Board therefore concludes the ALJ did not exceed his jurisdiction in considering and awarding medical treatment in this case.

Respondent next contends that the evidence does not warrant an award of medical benefits. This is not, in our view, a jurisdictional issue. The appeal to that issue should be considered dismissed.

Finally, respondent contends the ALJ erred in awarding attorney fees. The fees were awarded under K.S.A. 44-536(g). That statute obligates respondent to pay attorney fees for services rendered "subsequent to the ultimate disposition of the initial and original claim." Respondent contends the application for medical treatment considered here is not subsequent to the disposition of the initial and original claim because that case remained pending on appeal. In our view, an application for future medical benefits is, even where there the underlying case remains on appeal, subsequent to the ultimate disposition of the initial and original claim. The Appeals Board therefore agrees and affirms the finding and order that the respondent should pay \$250 in attorney fees.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge John D. Clark on December 2, 1997, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Steven L. Foulston, Wichita, KS  
Clifford K. Stubbs, Lenexa, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director